[redacted]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	)	CC Docket No. 92-115
	)	
Amendment of Part 22 of the Commission's Rules To Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-common Carrier Service	)	CC Docket No. 94-46 RM 8367
	)	
Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service	)	CC Docket No. 93-116

COMMENTS OF McCAW CELLULAR COMMUNICATIONS, INC. ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION

Cathleen A. Massey
Vice President - External Affairs
Roseanna DeMaria
Corporate Vice President - Revenue Security
McCAW CELLULAR COMMUNICATIONS, INC.
1150 Connecticut Ave., N.W.
4th Floor
Washington, D.C. 20036
(202) 223-9222

January 20, 1995

TABLE OF CONTENTS

Page

I. SUMMARY 2

II. THE COMMISSION SHOULD NOT IN ANY RESPECT ALTER ITS RULES AND POLICIES CONCERNING THE TAMPERING WITH CELLULAR ELECTRONIC SERIAL NUMBERS 4

A. The Maintenance of Accurate User Authentication Methodologies Is Essential to Effective Cellular System Operation 6

B. The C2+ and Similar Technologies Seriously Undermine the Integrity of Cellular Operations 8

C. The Objections of Equipment Manufacturers Do Not Warrant Wholesale Reversal of the Commission's ESN Rule 14

III. THE RULES GOVERNING CELLULAR SERVICE OPERATIONS AND PROCEDURES SHOULD BE RECONSIDERED OR CLARIFIED IN SEVERAL RESPECTS AS SUGGESTED IN THE PETITIONS 16

A. Wireless PBX Providers Should Be Required To Obtain Permission From the Appropriate Cellular Licensee Prior to Operation 16

B. The Commission Should Clarify That Dual Licensing of Cellular Transmitters Is Permitted Under Part 22 and Should Codify the Applicable Filing Requirements in the Rules 18

C. McCaw Supports Revision of the Cellular Renewal Rules To Retain Previously Adopted Procedures Governing the Dismissal of Competing Applications 19

Page

D. Sections 22.946 and 22.947 Should Be Clarified With Respect to the Inter-relationship Between Authorized Construction Periods and the Five-Year Build-out Period 20

IV. PRO FORMA RESTRUCTURINGS SHOULD BE PERMITTED ON A STREAMLINED BASIS 20

V. CONCLUSION 22

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	)	CC Docket No. 92-115
	)	
Amendment of Part 22 of the Commission's Rules To Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-common Carrier Service	)	CC Docket No. 94-46 RM 8367
	)	
Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service	)	CC Docket No. 93-116

COMMENTS OF McCAW CELLULAR COMMUNICATIONS, INC. ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION

McCaw Cellular Communications, Inc. ("McCaw"),[1] on behalf of its cellular, messaging, and commercial air-ground affiliates, hereby comments on the petitions for reconsideration and clarification filed with respect to the Commission's Report and Order in the above-captioned proceeding.[2] Most importantly, McCaw urges the Commission to make no fundamental changes in the policies governing cellular

---

[1] McCaw is a wholly-owned subsidiary of AT&T Corp.

[2] FCC 94-201 (Sept. 9, 1994) ("*Part 22 Rewrite Order*"), Erratum, Mimeo No. 44847 (Sept. 21, 1994). A summary of the order was published at 59 Fed. Reg. 59502 (Nov. 17, 1994), and an erratum to that summary was published at 59 Fed. Reg. 64855 (Dec. 16, 1994).

electronic serial numbers ("ESNs"). At the same time, however, McCaw supports certain requests to modify or clarify rules and policies relating to the cellular service and to transfer and assignment procedures.

I. SUMMARY

These comments address two sets of issues. *First*, a number of parties oppose the rules and policies adopted by the Commission to combat cellular fraud. McCaw generally opposes the relief sought by this group of petitioners. *Second*, several petitioning parties have proposed clarifications or modifications to rules affecting cellular operations and certain categories of transfer of control and assignment applications that will clarify carrier understanding of their regulatory obligations as well as streamline application requirements.

Initially, and most importantly, the fraud problems confronting the cellular industry are well recognized. The Commission has sought to address this serious problem through the adoption of rules and policies that should provide additional restraints on fraud. The Commission also has interpreted the requirements of its past and current policies in light of the activities of particular entities -- specifically the providers of emulation technology purporting to create a cellular extension phone -- and determined that such activities are illegal and pose serious consequences for cellular operations.

Cellular system integrity is essential to carrier ability to minimize fraudulent usage of cellular radio frequencies. The use of "cellular extension phones" created by means of the technology promoted by C2+ and others undermines this system integrity. Not only does the C2+ technology expand the opportunities for fraudulent users to take advantage of the cellular system, but it also undermines the ability of operators effectively to deploy a number of anti-fraud tools.

While C2+ and other entities offer up alleged precautions to ensure that customers deploying their devices do not serve as sources of fraudulent usage, these steps do not solve the fundamental problem with emulated phones. These phones are designed to deceive the cellular system and by definition undermine even the most sophisticated anti-fraud tools. Moreover, these petitioners resort to an appeal based on a portrayal of cellular carriers as attempting to take unfair advantage of both customers as well as these companies. In fact, the purveyors of emulation technologies are selling a product designed to "rip off" service providers by allowing individuals to obtain substandard service without having to pay for it. Section 22.919 thus should not be modified in any respect in response to their petitions.

Certain equipment manufacturers also have raised objections to Section 22.919. McCaw does not believe their concerns are well-founded, and specifically points out that *no* cellular carriers sought reconsideration of the ESN rule. Nonetheless, the Commission may be able to modify the rule slightly, to clarify that changes to a phone's firmware and software that are not related to ESN are allowed under Section

22.919, thereby responding to the manufacturing concerns while maximizing the protections against fraud.

McCaw supports Commission clarification or modification of its rules in the following respects:

- Requiring wireless PBX operators to obtain permission to operate from the appropriate cellular licensee;
- Codifying the cellular dual licensing policy and procedures;
- Retaining pre-existing cellular renewal application safeguards;
- Clarifying the length of the authorized construction period for certain Forms 401/600 filed near the conclusion of the five-year build-out period; and
- Streamlining the regulatory processes applicable to *pro forma* transfers of control and assignments.

II. THE COMMISSION SHOULD NOT IN ANY RESPECT ALTER ITS RULES AND POLICIES CONCERNING THE TAMPERING WITH CELLULAR ELECTRONIC SERIAL NUMBERS

A number of parties, led by C-Two-Plus Technology, Inc. ("C2+"), object to the Commission's adoption of Section 22.919, requiring the installation of a unique ESN in each cellular phone and prohibiting the manipulation of ESNs, as well as the Commission's reiteration of its longstanding policies with respect to ESN manipulation in existing cellular phones.[3] In general, these parties attempt to justify their conduct

[3] *See* Celltek Corporation Petition for Reconsideration to Proposed Changes to FAR 22.919 ("Celltek"); Cellular Paging Systems, Inc. Petition for Reconsideration

(continued...)

by claiming that they provide a publicly beneficial service that enables cellular consumers to obtain economical "extension phone" service. They try to portray cellular carriers who vehemently oppose their activities as being motivated only by greed. They further allege that, notwithstanding the Commission's findings that their "service" violates past and current federal rules and policies, their manipulation of ESNs is or should be a fully permissible activity.

These claims must be rejected. The Commission has correctly found that emulation services provided by companies such as C2+ create an intolerable risk to the cellular industry's fraud prevention programs. Moreover, the Emulation Petitioners are selling to the public a service that is intended to "rip off" cellular carriers and their subscribers. As satellite programming providers and cable TV operators have found, there are many "entrepreneurs" seeking to develop devices to be peddled to the public to allow individuals to obtain substandard services without paying for them. The C2+ and related technologies and devices are just another subset of these activities.

The claims of the Emulation Petitioners should be promptly rejected for the reasons discussed below, and the Commission should retain Section 22.919 as it now exists (or, at most, with minimal modifications). In addition, the Commission should

---

[5](...continued)
("CPS"); Petition for Reconsideration of C-Two-Plus Technology, Inc. ("C2+"); Zachary Len Gibson Petition for Reconsideration ("Gibson"); Edwin G. Jones Petition for Reconsideration ("Jones"); MTC Communications Petition for Reconsideration ("MTC"); Sound & Cell Petition for Reconsideration to Proposed Changes to FAR 22.919 ("S&C"); M.C. Stephan Petition for Reconsideration ("Stephan") (collectively, the "Emulation Petitioners").

reiterate the determinations contained in the *Report and Order* regarding the illegality of the C2+ and similar technologies as applied to cellular phones already type accepted and those that may receive type acceptance after January 1, 1995.

A. The Maintenance of Accurate User Authentication Methodologies Is Essential to Effective Cellular System Operation

The creation of the cellular system infrastructure has necessitated the development of standards to manage a seamless communication system of significant capacity. These standards were in part imposed by the Commission[4] and in part developed by the industry as it established itself and gained real world operational experience. The cellular system's ability to perform is premised upon the accuracy of the radio signals transmitted within it. Similarly, the related protocol that receives the signals and transports them throughout the system to enable the functioning of a seamless service environment is equally dependent on the authenticity of these signals.

To maintain the integrity of system operations, cellular carriers employ validation processes for the provision of service to subscribers. The key to an effective validation process is the premise that each cellular unit has its own unique ESN, which in turn is associated with a particular mobile identification number ("MIN"). As a result, carriers need the ability to uniquely identify each and every wireless unit.

---

[4] *E.g.*, Section 22.933, *Report and Order*, B-78; superseded 47 C.F.R. § 22.915 (1993); Cellular Communications Systems, 86 F.C.C.2d 469, 508 (1981); "Cellular System Mobile Station-Land Station Compatibility Specification" (April 1981 Ed.), Office of Engineering and Technology Bulletin No. 53.

The maintenance of the system's integrity is critical to a fraud-free operational environment, and authenticity is necessary for the system to safeguard against fraud. As experience has demonstrated, the cellular industry cannot foresee the many forms that future fraud attacks will take. The only certainty, in fact, is that fraud attacks *will* occur, and when they do manifest themselves, they will be using a format that deceives the system into believing that they are not a fraudulent user. Consequently, anti-fraud measures are designed to detect multiple registration of the same ESN/MIN combination in different parts of the cellular network and terminate service to those phones. The C2+ technology undermines these efforts.

The technology also is incompatible with advanced anti-fraud programs such as RF "fingerprinting," which creates a distinct RF profile to validate calls for each phone. An emulated phone would lack the RF "fingerprint" associated with the ESN/MIN combination of the original unit. It would therefore fail the "fingerprint" test and be terminated by the carrier as a cloned phone. C2+ suggests that carriers must be required to accommodate its customers once they have "registered" with the cellular provider.[5] Cellular carriers must not be expected to accommodate a technology that abrogates their most sophisticated anti-fraud measures.

Effective validation steps also are necessary to permit a carrier to bill customers for use of the cellular and other facilities. Without specific information to determine

---

[5] C2+ at 23.

the usage associated with particular units and particular accounts, cellular licensees cannot economically provide their services.

B. The C2+ and Similar Technologies Seriously Undermine the Integrity of Cellular Operations

The C2+ emulation technology compromises the integrity of the operational environment precisely because it is premised on deception of the system. This encryption/decryption technology misleads the cellular system into treating the emulated phone as if it were the original phone. The system serves both phones as they register in the system and maintains their operation, in many respects, as if they were the same phone. This deception is fundamental to the successful operation of the C2+ phone.

C2+'s claims that the technology permitting this deception is only utilized by legitimate cellular customers is entirely irrelevant because the integrity of the system itself is undermined by the deception. The carrier and its entire body of customers bear the resulting direct and indirect costs. Similarly, the legitimacy or illegitimacy of C2+'s intent in developing and marketing its service does not matter, since the technology itself creates very serious opportunities for fraudulent use and prevents effective deployment of a variety of anti-fraud tools. Simply put, the cellular system cannot support the C2+ technology without increasing the system's own fraud vulnerability.

In response to the Commission's conclusions, C2+ cites to a number of "precautions" that either it currently employs or it would support,[6] but these protections in fact are worthless. In that regard, C2+ finds significant the absence of carrier complaints about C2+ customers engaging in fraud or of any fraud evidence connected with C2+.[7] The absence of such complaints, however, demonstrates absolutely nothing. As C2+ itself asserts, a cellular carrier has no concrete way of identifying the C2+ customer. If the carriers do not know who the C2+ customers are, the carriers cannot know whether such users are fraudulent. The absence of fraud evidence thus is merely a red herring. In fact, cellular carriers routinely terminate service to cellular numbers when the same ESN/MIN combination registers on the system in more than on location. Some percentage of these fraud alerts are undoubtedly due to the activities of C2+ and its customers.

In terms of safeguards allegedly to protect against fraud, C2+ requires its customers to prepare an application containing name, address, landline telephone number, and a form of photo identification, and demonstrate that they are an authorized cellular subscriber.[8] These requirements, however, do not prevent fraudulent activities, specifically including subscription fraud. False identification can readily be obtained and presented, and C2+ has no means for determining the accuracy of the

---

[6] *See* C2+ at 9, 21-23. MTC's suggestions are similar to those offered by C2+, and provide no greater protections against fraud. MTC at 12-13.

[7] C2+ at 8-9.

[8] C2+ at 9.

information presented to it by a potential customer. In addition, C2+ has no way of knowing whether the customer is in good standing with the cellular carrier. While the information may be necessary for C2+'s own billing purposes, to suggest that requiring this information is a "substantial precaution" is at best foolhardy and at worst disingenuous.

C2+ proposes also to provide carriers with a list of customers in an effort to distinguish the emulation customer from the fraudulent user.[9] This proposed solution has at least two problems. First, the list is dependent on the quality of the identification information given to C2+. The list thus may contain fraudulent users who are indistinguishable from legitimate clients.

Second, the list does not assist the carriers with anti-fraud tracking software. An emulated phone can be cloned just as easily as any other phone. If a carrier's anti-fraud tracking software identifies the existence of counterfeit phones but determines to continue service to the phones because the customer is included on the C2+ list, this approach actually would promote fraud. The anti-fraud tracking software would not be able to discern the difference between an emulated phone and one or more concurrently operating cloned phones. The cloned phone thus would "hide" behind the emulated phone, with the C2+ list assisting in that process. In this situation, C2+ phones

---

[9] C2+ at 12-13. MTC would require its customers to notify the serving carrier. MTC does not explain, however, the means it would use to enforce this requirement.

would be the best type of phone to clone from the fraudulent user's perspective, since the user would be granted further protection from detection.

As part of its defense, C2+ once again claims that the consumer is being deprived of an important benefit by means of the FCC's rules and policies, and that industry motives are to stifle competition and deny the C2+ product to the customer.[10] To suggest that cellular carriers -- many still seeking to establish themselves competitively and financially -- would deny customers a service they want is patently absurd. Rather, cellular providers have opposed deployment of the C2+ technology because of its serious compromising of the cellular network and the resulting adverse consequences.

Cellular carriers have instead sought to deploy a comparable service that does not undermine cellular system integrity. This has required the development of appropriate software, which must be made consistent with the specific capabilities and technical specifications of the cellular switch in each market where a carrier includes a "cellular extension phone" offering. McCaw, for example, now offers such service in its Seattle market, with plans for expansion to a number of other systems controlled by McCaw.

---

[10] C2+ at 13-18.

The Emulation Petitioners argue that cellular licensees oppose the C2+ and other emulation technologies because of carrier desire to maximize profits.[11] Indeed, MTC asserts that "[c]ellular telephones are the property of the customer and they should be free to use them in any manner provided that no harmful interference is caused to the network."[12] This suggests that MTC views the cellular network as a public commodity, which it certainly is not. These claims must be viewed as nothing more than an attempt to appeal to "Robin Hood" sensibilities and with no legal or competitive significance.

Contrary to the unsupported assertion that an extra phone operating with the same ESN as a registered cellular phone creates only a usage cost,[13] each cellular telephone operating on a system imposes other costs. A phone is continually registering on the system, which is necessary to provide service to the phone and for billing. These maintenance and user services impose costs, even where the subscriber is not actually using the phone to place and complete calls.

More importantly, however, a C2+ emulated phone degrades the level of service provided by carriers. Emulated phones adversely affect the ability of operators to meet customer expectations about service performance, because the system cannot distinguish between the original phone and the emulated phone. Notwithstanding

---

[11] Celltek at 3; C2+ at 17-18; Jones at 2; MTC at 10-11; S&C at 3; Stephan at 2-3.

[12] MTC at 10.

[13] *See* Celltek at 6; CPS at 1-2; C2+ at 14-15, 16-18; S&C at 3.

C2+'s direction to users that the multiple phones cannot be simultaneously operated, many subscribers in fact will have all phones turned on. The cellular carrier will not know where to deliver the call, creating operational problems and decreasing service quality. Again, regardless of C2+'s cautionary statements, customers will consider the serving carrier to be responsible for missed calls and other related service problems.

C2+ also induces existing cellular subscribers to breach their contracts with the serving carrier.[14] Specifically, the standardized McCaw contracts, for example, contain clauses regarding the use of service and equipment and impose certain obligations on the customer. These clauses prevent the use of an emulated phone, and accordingly are breached by the customer, in complicity with C2+, whenever such a phone is employed.

The operation of a C2+ phone places costs on the system, from both a fiscal perspective and a service quality perspective. In this context, the C2+ product cannot be considered to be pro-consumer. In fact, C2+'s attack appears designed to thwart the emergence of competing service offerings that comply with industry standards, have superior service, and are compatible with anti-fraud tracking software. As such, the efforts of C2+ and providers of similar services must be viewed as an attempt to preserve their own market position against competition.

---

[14] C2+ requires a potential customer to provide evidence that it is an existing subscriber to cellular service. C2+ at 9.

In sum, the C2+ and similar technologies provide increased opportunities for fraud and prevent effective implementation of cellular anti-fraud techniques. Adoption of the C2+ perspective will only increase the fraudulent usage already present in the cellular industry. The Commission should maintain its bar on the use of these and other emulation technologies and devices.

C. The Objections of Equipment Manufacturers Do Not Warrant Wholesale Reversal of the Commission's ESN Rule

The Mobile and Personal Communications 800 Section of the Telecommunications Industry Association ("TIA")[15] and The Ericsson Corporation ("Ericsson")[16] object to the Commission's ESN rule as well. These petitioners argue that the rule will render equipment repair and service upgrades very difficult, if not impossible.[17] According to these manufacturers, the Commission instead should prescribe or mandate the adoption of an authentication methodology or protocol.[18]

These arguments do not warrant the relief sought by the petitioners. Initially, McCaw notes that manufacturer opposition to the Part 22 standard is by no means uniform. Indeed, Nokia Mobile Phones, Inc. ("Nokia") filed comments supporting the

---

[15] The Mobile and Personal Communications 800 Section of the Telecommunications Industry Association Petition for Clarification and Reconsideration ("TIA").

[16] Petition for Reconsideration of The Ericsson Corporation ("Ericsson").

[17] TIA at 8-11; Ericsson at 3-8.

[18] TIA at 12-16; Ericsson at 10-13.

rules and urging the Commission to deny any requests that might weaken the necessary limitations on the use of ESN computer software in the field.[19]

Second, despite the manufacturers' claims that Section 22.919 will cause great hardship in the cellular industry,[20] no cellular carrier has sought reconsideration of or relief from the Part 22 ESN policy. Indeed, the principal trade association of cellular carriers vehemently opposed TIA's request for stay of the effective date of Section 22.919.

Third, the alternatives offered by the manufacturers are not currently viable options for restraining the rampant levels of cellular fraud throughout the country. Authentication protocols, which McCaw believes eventually will play an important role, are just now being developed and may require system capabilities that currently are not available in many systems (and in some smaller systems may never be available).

Finally, to the extent there are any uncertainties about the Commission's requirements or any validity to the dire claims of the manufacturers, they can be readily addressed by clarifying the restrictions imposed by Section 22.919. In particular, the Commission should clarify that software and firmware upgrades to phones that are not associated with the ESN are permitted. Carriers and manufacturers

---

[19] Comments of Nokia Mobile Phones, Inc. in Support of the Current Revision of Part 22 Cellular Electronic Serial Number Requirements in Section 22.919 (filed Dec. 8, 1994).

[20] *E.g.*, Ericsson at 3.

could, for example, upgrade a customer's phone by installing software corrections or advanced features. Adoption of this approach would afford slightly greater flexibility to address the concerns of the petitioning manufacturers, while still aiding in the establishment of maximum safeguards against cellular fraud.

III. THE RULES GOVERNING CELLULAR SERVICE OPERATIONS AND PROCEDURES SHOULD BE RECONSIDERED OR CLARIFIED IN SEVERAL RESPECTS AS SUGGESTED IN THE PETITIONS

A. Wireless PBX Providers Should Be Required To Obtain Permission From the Appropriate Cellular Licensee Prior to Operation

AirTouch Communications, Inc. ("AirTouch") with U S WEST NewVector Group, Inc. ("NewVector")[21] and Cellular Communications of Puerto Rico, Inc. ("CCPR")[22] urge the Commission to clarify its rules with respect to the operation of wireless PBXs on cellular frequencies. The petitioners note that vendors are selling such equipment directly to the public and that these facilities often are operated without any notification to or supervision by the cellular carrier on whose frequencies the wireless PBX is operating. The petitioners accordingly request that the Commission clarify its rules to require wireless PBX providers to obtain the permission of the

---

[21] AirTouch Communications, Inc. and U S WEST NewVector Group, Inc. Joint Petition for Reconsideration and Clarification at 12-13 ("AirTouch/NewVector").

[22] Petition for Reconsideration of Cellular Communications of Puerto Rico, Inc. at 5-6 ("CCPR").

appropriate cellular licensee or to operate only under the direct supervision of the licensee.

McCaw supports grant of the clarification requested by AirTouch/NewVector and CCPR. This interpretation in fact is required by Sections 22.905(a) and 22.927. Section 22.905(a) assigns frequencies for the *exclusive* use of a particular licensee in that licensee's cellular geographic service area. Section 22.927 provides that mobile units are deemed to be operating under the cellular system's license, and imposes on licensees the obligation of "exercising operational control over the mobile stations receiving service through their cellular systems."[23]

The operation of wireless PBXs on cellular frequencies without the approval and/or supervision of the licensee whose authorized frequencies are employed contravenes these rights and obligations, and undercuts the cellular licensing structure devised by the Commission. The use of cellular frequencies on an unauthorized basis is inconsistent with Part 22 as well as the Communications Act. As CCPR correctly notes, such usage may impair service to the public in a number of respects.[24] The Commission thus should take advantage of this opportunity to make clear the obligations imposed on the operators of wireless PBXs using cellular frequencies.

---

[23] New Section 22.927, *Report and Order*, B-78.

[24] CCPR at 5-6.

B. The Commission Should Clarify That Dual Licensing of Cellular Transmitters Is Permitted Under Part 22 and Should Codify the Applicable Filing Requirements in the Rules

Several parties request the Commission to reinstate language contained in old Section 22.903(e) specifically authorizing the dual licensing of cellular transmitters.[25] As the petitioners suggest, reinstatement of this rule provision will leave no doubt that such dual licensing, as the Commission has permitted for years, remains permissible under Part 22. Despite staff assurances that dual licensing in fact remains permissible, the absence of specific authorizing rule language raises unnecessary doubts. To eliminate any questions and to maintain the benefits of this procedure, repeatedly recognized by the Commission, specific provisions should be adopted on reconsideration.

The Commission should concurrently and specifically state the application procedures that will be employed to accomplish such dual licensing. In the past, cellular licensees have been directed by Commission staff to comply with procedures not expressly contained in the rules. To ensure that licensees fully understand and comply with applicable procedures, these requirements should be specifically set out in the Part 22 Rules.

---

[25] *See* AirTouch/NewVector at 10-11; CCPR at 4-5; GTE Service Corporation Petition for Reconsideration and Clarification at 5-7 ("GTE"); Southwestern Bell Petition for Reconsideration and Clarification at 11 ("Southwestern Bell").

C. McCaw Supports Revision of the Cellular Renewal Rules To Retain Previously Adopted Procedures Governing the Dismissal of Competing Applications

GTE observes that new Section 22.936 appears to omit certain safeguards previously contained in old Section 22.943 regarding the dismissal of competing applications prior to the issuance of an Initial Decision in a comparative renewal proceeding.[26] McCaw noted in its petition for reconsideration or clarification that, in light of the Commission's explanation concerning new Section 22.936, this omission apparently was inadvertent.[27] In order to retain the benefits derived from minimizing the filing of speculative competing renewal applications, McCaw supports GTE's request that the Commission "restor[e] the provision from old rule 22.943(b)(1) that requires challenging applicants in renewal proceedings seeking to withdraw or dismiss their applications prior to the Initial Decision stage to certify that no money or other consideration has been or will be received by them or their principals in exchange for withdrawal of their applications."[28]

---

[26] *See* GTE at 10-12.

[27] McCaw at 44-45.

[28] GTE at 12.

D. Sections 22.946 and 22.947 Should Be Clarified With Respect to the Inter-relationship Between Authorized Construction Periods and the Five-Year Build-out Period

Western Wireless Corporation ("WWC") requests "that the Commission clarify that the full twelve-month construction period provided in new Section 22.946(a) applies to all granted Forms 401, whether filed by the licensee or a third party pursuant to a partitioning contract, even if this twelve-month period ends after the termination of the five-year build-out period."[29] WWC argues that Sections 22.946 and 22.947 could, read together, be capable of an interpretation whereby the five-year build-out date would also limit the construction period for Forms 401 (now Forms 600) filed before the conclusion of the protected build-out period. McCaw supports specific clarification that, for such applications, the Commission will retain its current practice and grant a full twelve-month construction period, even when that date would fall after the five-year build-out date.

IV. PRO FORMA RESTRUCTURINGS SHOULD BE PERMITTED ON A STREAMLINED BASIS

AirTouch/NewVector and BellSouth offer two proposals designed to streamline the regulatory processes related to internal corporate reorganizations affecting licensees and to other types of *pro forma* transfers of control or assignment. *First*, these parties urge the Commission to eliminate the prior approval requirement for purely internal

---

[29] Western Wireless Corporation Petition for Reconsideration at 6-7 ("WWC").

corporate restructurings.[30] As noted in the petitions for reconsideration, in such circumstances, there is no change in ultimate control and no need for the Commission to review the qualifications of an entity on which it has already passed.

Second, applications seeking Commission consent to a *pro forma* transfer of control or assignment should be deemed granted effective the date filed with the Commission.[31] Alternatively, as suggested by AirTouch/NewVector, the application could be deemed granted 15 days after filing unless the Commission indicates otherwise.[32] The petitioners correctly point out that such *pro forma* applications do not involve substantial changes in beneficial ownership or control, and thus do not raise substantial public interest concerns.

McCaw supports grant of the above proposals. Adoption of these procedures will enhance the ability of licensees to adapt their respective organizational structures to business demands while not detracting from the Commission's ability to fulfill its statutory mandates.

---

[30] AirTouch/NewVector at 4-5; BellSouth Corporation and BellSouth Enterprises, Inc. Petition for Reconsideration at 11-13 ("BellSouth").

[31] AirTouch/NewVector at 5-6; BellSouth at 13-14.

[32] AirTouch/NewVector at 6.

V. CONCLUSION

The petitions for clarification or reconsideration of the *Report and Order* in this docket have raised a number of issues. Several parties object to the Commission's ESN policies. Because the activities favored by the Emulation Petitioners fundamentally undermine the ability of cellular carriers to fight fraud, their proposals should be rejected. Similarly, except for possible minor modifications that would . . essentially preserve the core of the Section 22.919 protections, the alternatives offered by cellular equipment manufacturers must be rejected at this time.

At the same time, McCaw supports adoption of several modifications to the cellular and transfer rules. These include: requiring wireless PBX operators to obtain permission to operate from the appropriate cellular licensee; codifying the dual licensing policy and procedures; retaining pre-existing cellular renewal application safeguards; clarifying the length of the authorized construction period for certain Forms